IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 14TH AUGUST 2007 / 23RD SRAVANA 1929

CRP.No. 753 of 2007 & CAVEAT O.P.612/07

AGAINST THE ORDER DATED 26/07/2007 IN EP 273/03 IN
OS.344/2000 of ADDL.SUB COURT,PARAVUR

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REVN. PETITIONER: PETITIONERS/RESPONDENTS/JUDGMENT DEBTORS

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1. PATHUMMA, W/O. VEERANKUTTY,
PATTARAYIL VEEDU, PURAYAR DESOM, P.O.ALUVA.

2. BASHEER, S/O. BEERAKUTTY,
-DO- -DO-

3. ABDUL SALAM, S/O. BEERAKUTTY,
-DO- -DO-

4. SULEKHA, D/O. BEERAKUTTY,
-DO- -DO-

5. NABIYA, D/O. BEERAKUTTY,
-DO- -DO-

6. RAMIA, D/O. BEERAKUTTY,
-DO- -DO-

BY ADV. SRI.N.SUKUMARAN
SRI.S.SHYAM
SRI.BOBBYMATHEW KOOTHATTUKULAM

RESPONDENTS: PETITIONER/DECREE HOLDER

K.ALI KUNJU, S/O. KUNJIKOCHU HAJI,
KORNIYIL HOUSE, THAIKKATTUKARA, ALUVA TALUK.

BY ADV SHRI. HARIHARAPUTHRAN

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 14/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J.

C.R.P.No. 753 OF 2007 &
Caveat O.P.612/07

Dated this the 14th August, 2007.

O R D E R

This revision is preferred against the order of the Additional Subordinate Judge, North Parur in E.P.273/03 in O.S.344/2000. The suit was one for specific performance of the contract and the court ultimately decreed the suit. A perusal of the decree would read as follows.

2. As per the decree the defendant is bound to execute a sale deed in favour of the plaintiff, after the receipt of the balance sale consideration within month from the date of decree otherwise the plaintiff is permitted to deposit the balance sale consideration in court and get the sale deed executed in respect of the plaint schedule property from court. The plaintiff shall also pay the entire liability outstanding towards the loan account pending with the Ernakulam Agricultural Development Bank, Aluva Branch up to date. Accordingly the suit was decreed with costs. Now the court below accepting the statement Annexure VII directed the defendants to execute the sale deed without any further amount being deposited. The learned counsel for the revision petitioner contends before me that as per the decree if it is read the liability to

pay the amount to the bank is over and above the sale consideration fixed and therefore the court cannot make appropriation of that amount towards the total sale consideration of Rs.11,26,500/-. On the other hand the learned counsel for the respondent would contend that as per the agreement and the written statement filed by the defendants in the case the amount outstanding as on 31.12.1990 is to be paid by the defendants and the balance amount due as on 1.1.2000 has to be paid within the stipulated period out of the total sale consideration fixed under the transaction. Learned counsel for the respondent also has produced before me for perusal a copy of the judgment in the suit. "It was agreed between both sides that the outstanding amounts due towards the principal and interest in the Ernakulam Agricultural Bank till 31.12.99 shall be paid off by the defendants and the balance amount remaining to be paid thereafter would be paid by the plaintiff within the stipulated period of 11 months out of the balance amount of consideration due to the defendant." I have extracted this for the specific purpose of showing that the amount due as on 31.12.99 has to be paid by the defendants and the balance has to be paid by the buyer out of the total sale consideration fixed. So, the learned counsel for the revision petitioner would contend that the

decree is not worded in that way and it is not clear, cannot be accepted. The case of the defendant from the written statement itself is very clear. The decree has to be read understanding the implications mentioned in the written statement and if it is done so what the court has decreed is casting the liability on the plaintiff to pay the amount due on 1.1.2000. It is that amount which has to be paid by the plaintiff to the bank and as extracted in the written statement it must be from the total sale consideration. Therefore, the contention that over and above the sale consideration the outstanding due to the bank has to be paid by the plaintiff viz., the buyer does not hold good and therefore the said contention is rejected.

2. No we will consider the other contentions raised by the parties. As per the statement the amount due as on 1.1.2000 is Rs.3,21,000/-. If the amount is paid in time, i.e the instalments being paid regularly the amount outstanding towards the bank liability could have been only Rs.3,21,000/-. May be due to the litigation or due to the difference of opinion between the parties the matter has got protracted. But nevertheless when an agreement for specific performance is enforced the terms are binding and therefore they cannot escape from the liability of payment of interest by the buyer if he has committed default in

making the payment due to the bank. The liability due to the bank as on 21.3.2003 is calculated as Rs.4,32,172/- whereas if the amount is paid in time it would have been only Rs.3,21,000/-. Therefore, the excess amount has to be paid only on account of the plaintiff's delay and it comes to Rs.1,11,172/-. On 25.7.2003 an amount of Rs.4,26,700/- is deposited. The cost awarded by the decree comes to Rs.98,519/-. According to the calculation of the decree holder, taking into consideration Rs.1,11,172/- as well, he has paid or deposited excess amount of Rs.60,891/- and therefore the seller is bound to execute the document without a claim for any further amount. As stated by me earlier the payment of interest of Rs.1,11,172/- has to be borne by the buyer as per the terms of the agreement and for that the seller should not be penalised. Similarly I am informed that an amount of Rs.35,000/- has been paid by the seller towards the liability for the bank after this 1.1.2000 and it is seen extracted in pages 4 and 5 of the order of the court below. So, on a calculation of the entire thing Rs.1,11,172 minus the amount which according the decree holder's statement is Rs.60,891/- would be Rs.50,281/- i.e to make it very clear the amount of Rs.1,11,172/- is to be paid by the buyer and buyer alone. So, on adjustment of the amount on that basis Rs.50,281/-

is due to the seller. Over and above this the seller had paid Rs.35,000/- to the bank since there was no repayment in time by the decree holder. So adding that the total amount will come to Rs.85,281/-.

3. The learned counsel for the respondent would submit that he has paid Rs.18,000/- to the bank, which is not given credit to. If there is any difference of excess payment made to the bank it is a matter which can be always be adjusted with the bank after obtaining proper papers from the bank. Therefore this petition is disposed of as follows.

4. The plaintiff will be entitled to get the document executed on deposit of Rs.85,281/- and the said amount is due to the defendants and they are at liberty to withdraw the same after executing the document in favour of the plaintiff as directed by the court. C.R.P is disposed of accordingly.

M.N.KRISHNAN
Judge

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